IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.475 OF 2006
WITH
CIVIL APPLICATION NO.591 OF 2006

M/s. United System Infotech Pvt. Ltd. ... Appellants

Vs.

Aslam Mohammad Kallan & Anr. ... Respondents

Mr. A.M. Saraogi for the appellants.

Mr. B.R. Vishwakarma for respondent Nos.1 and 2.

CORAM : A.M. KHANWILKAR, J.

DATED : 13TH JULY, 2006.

P.C.:-

1. Heard counsel for the parties. Admit. Counsel for the respondents waives notice. As short question is involved, appeal is heard forthwith by consent.

2. This appeal from order takes exception to the judgment and order passed by the trial court dated 4/5/2006 in S.C. Suit No.2009 of 2006 refusing to grant ad-interim relief as prayed for by the appellants during the pendency of the notice of motion. In this appeal, order of status-quo came to be passed on 5/5/2006, which order is continuing till today. Ordinarily as the appeal from order is directed against refusing ad-interim relief and this court has already granted status-quo that arrangement would have been continued with

direction to the trial court to dispose of the notice of motion expeditiously.

3. However, counsel for the respondents has registered strong objection for continuation of order of status-quo. According to the respondents, the possession of the appellants in the suit premises was on account of agreement dated 21/2/2004 and on terms and conditions specified therein. It is contended that it was a case of permissible user during the specified period. Besides, the agreement period has already elapsed long back and the appellants have no right to enter the suit premises. It is also submitted by the respondents that the appellants have not paid any amount to the respondents since November, 2005 and is forcing their entry in the suit premises more particularly now under the orders of the court. In this view of the matter, it is submitted that no indulgence be shown to the appellants.

4. In fact, the appellants have no right to enter the suit premises. That too, without offering any amount towards monthly compensation, which was payable under the agreement between the parties and further compensation in terms of clause 18 of the agreement at the rate of Rs.3,000/- per day for the extended user of the said premises as per the earlier arrangement and in which case it will be open to the respondents to claim compensation in terms of clause 18 of the agreement in the sum of Rs.3,000/- per day basis.

5. In my opinion, having regard to the facts of the present case, the order of status-quo as passed by this court will be continued till disposal of the notice of motion on condition that the appellants deposit the entire outstanding amount payable as per the agreement (Rs.1,60,000/-) in the trial court within one week from today. It will be open to the respondents to apply to the trial court for withdrawal of the said amount. In addition, the appellants will be obliged to offer bank guarantee in the sum of Rs.8,00,000/- to be submitted before the trial court within two weeks from today. The amount of Rs.8,00,000/- has been arrived at on the basis of the compensation specified in terms of clause 18 of the agreement at the rate of Rs.3,000/- per day for each day of default. If the respondents are right in their stand that the parties had agreed for such compensation, in that case, the respondents will be in a position to take recourse to recover the said amount on the basis of such bank guarantee. For the future period, the appellants undertake to deposit Rs.20,000/- per month basis in the trial court till disposal of the notice of motion or till such further order is passed by the trial court. Besides, at the end of the month, the appellants shall furnish bank guarantee of Rs.70,000/- for each month basis till disposal of the notice of motion. This bank guarantee will cover the amount specified under clause 18 of the agreement between the parties. Future deposits made by the appellants can be withdrawn by the respondents on making applications to the trial court.

6. It is only on this condition that the appellants can be heard to say that

he will be entitled to enter the suit premises and enjoy the same in terms of the agreement in question. Appeal as well as the civil application are disposed of in the above terms.

7. The trial court is directed to finally decide the notice of motion expeditiously as possible, preferably by 8/9/2006. This observation is made on the basis of the assurance given by the counsel for the parties that they shall extend full cooperation to the trial court for early disposal of the notice of motion. All questions are kept open to be decided at the hearing of the notice of motion. Counsel for the respondents submit that he will permit entry of the appellants in the suit premises for permissible user only the above conditions are complied with regarding deposit and furnishing bank guarantee by the appellants.

[A.M. KHANWILKAR, J.]